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OGC 78-0911

14 February 1978

MEMORANDUM FOR: Office of Legislative Counsel

ATTENTION:

FROM:

Logistics & Procurement Law Division
Office of General Counsel

SUBJECT: Small Business Procurement Expansion and
Simplification Act of 1977 - S. 2259

REFERENCE: Note dtd 3 Feb 78 to L&PLD/OGC fm OLC
(Requesting Views on Subject Bill)

1. We have reviewed S. 2259, 95th Cong., 1st Sess. (1977), and offer the following comments:

a. This Bill increases the power of the Administrator of the Small Business Administration (SBA) to evaluate and approve most (the exceptions are very limited) procurement proposals. His failure to approve the award of a particular procurement would necessitate a third party review of the situation (see pages: 2, line 13; and 5, line 13). This would curtail the independent authority currently exercised by an agency head to award a contract without further review.

b. The increased role for the SBA Administrator would most certainly require SBA personnel to be permanently assigned or detailed to oversee Agency contracting. From a security standpoint alone, this would seem intolerable.

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c. The simplification section of the Bill seems to place a totally unnecessary and unwarranted responsibility on the procuring activity to aid the small business concern in bidding on a proposal. Who will bear the liability if improper Federal laws or agency rules are referenced to the prospective bidder? Should an attorney review the referenced materials to insure they do indeed apply to the particular fact situation? Finally, providing the name and telephone number of an employee to answer questions has serious security implications.

d. The requirement to publish notice of any procurement contract in the Commerce Business Daily would create havoc with our contract security (page 3, line 20).

2. Based on the above comments, this Office suggests that the Office of Legislative Counsel should consider making the difficulties this Bill would cause our procurement office known to the appropriate officials and that perhaps an Agency exemption should be sought insofar as it would be consonant with the purposes of Agency activities and Bill supporters.

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cc: D/L